

**NATHAN FOOTE, on behalf of  
himself and others similarly situated;  
and KENNETH LALLY, on behalf of  
himself and others similarly situated  
Plaintiffs,**

**CIVIL ACTION NO. CV-2000-1074**

## SETTLEMENT AGREEMENT

## RECITALS

IV. PCI asserts that its actions have been lawful and proper in all respects. PCI further asserts that its conduct was at all times in full and complete compliance with all state and federal laws. PCI denies that it breached any agreements or other contracts with Settling Plaintiffs, and further denies each and every claim of wrongdoing made by Settling Plaintiffs or members of Subclass A they seek to represent. PCI contends that it has not violated any state or federal law or rule or regulations

of any state or federal agency or otherwise violated any rights of Plaintiffs or Subclass Members.

V. Settling Plaintiffs, the Michigan Attorney General, and PCI agree to file a Consent Motion For Preliminary Approval Order seeking to have the Court certify for settlement purposes only Subclass A that the Settling Plaintiffs seek to represent under the Alabama Rules of Civil Procedure. For settlement purposes only and solely pursuant to the terms of this Settlement Agreement, PCI consents to the establishment of the settlement Subclass division A-1 sought to be represented by Plaintiff Lally and Subclass division A-2 sought to be represented by Plaintiff Foote as defined below for the purpose of settling the claims of the Settling Plaintiffs and the members of the Subclass they seek to represent.

VI. Settling Plaintiffs' Counsel (hereinafter "Class Counsels"), as Counsel for Settling Plaintiffs and all Subclass Members each seek to represent have conducted an extensive investigation of the facts and law relating to the claims asserted in this action. In evaluating the settlement provided for herein, Settling Plaintiffs and Class Counsel have considered (a) the expense and length of time necessary to prosecute this action, (b) the risk of decertification of the Subclass, (c) the risk of successful defense based on all available defenses, and (d) the substantial benefits provided to Subclass Members by the settlement described in this Agreement. Settling Plaintiffs and Class Counsels are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, due to the likelihood that continued litigation (either through this Action or in multiple suits by Subclass Members) will be protracted and expensive, and due to the risks and difficulties associated with establishing any right to recover on the part of said Subclass.

VII. Although PCI expressly disclaims any liability or any wrongdoing of any kind whatsoever, and affirmatively contends that its actions have been consistent and in compliance with applicable state or federal law, PCI nevertheless considers it desirable that this Action and the claims of the Settling Plaintiffs and the Subclass each seeks to represent be settled upon the terms and conditions set forth in this Agreement, in order to avoid further expense, burdensome and protracted litigation, and in order to resolve finally and foreclose all claims which have been, or might have been, asserted by Settling Plaintiffs or any Subclass Members each seeks to represent, whether such claims are asserted directly, by crossclaim, by third party claim or otherwise.

VIII. To avoid the high costs and delay associated with attempted vindication of their legal positions, the Settling Parties agree, as specifically stated in this Agreement, to a class settlement that is based primarily on certain cash payments to eligible Subclass Members. Under this Agreement, PCI is providing substantial benefits to eligible Subclass Members as described more fully herein.

#### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby stipulated and agreed by and between the Settling Parties, Class Counsels, and Counsel for PCI, that the above-captioned action is compromised and settled, subject to the approval of the

Court, upon and subject to the following terms and conditions:

#### **DEFINITIONS**

A. “KM.Net Internet activity” shall mean any transaction in which a Subclass Member’s bank account was electronically debited on or after March 22, 2000 in connection with the purchase of a KM.Net Internet shopping mall(s) on the Internet during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:00 a.m. CST.

B. “Benefits” shall mean the consideration conferred upon the Subclass Members, consisting of the benefits contained in Paragraph 5 of this Agreement.

C. “Claim Form” shall be in substantially the form as attached to the Class Notice annexed hereto as Exhibit “A”.

D. “Subclass division A-1” shall mean and include all persons or other entities who purchased only one internet shopping mall from PCI, such purchase having been made on the Internet during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:00 a.m. CST, and resulting in that person’s or entity’s bank account being electronically debited on or after March 22, 2000, in the amount of the purchase price.

E. “Subclass division A-2” shall mean and include all persons or other entities who, irrespective of the total number of their purchases of internet shopping malls from PCI, purchased two or more Internet shopping malls on the Internet during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:00 a.m. CST, resulting in that person’s or entity’s bank account being electronically debited on or after March 22, 2000, in the amount of the purchase price of such mall(s).

F. “Commissions” shall include commissions, bonuses, dividends, or any other monetary benefit paid by PCI and actually received by a member of Subclass A as defined above for the sale of internet malls.

G. “Court” shall mean the Circuit Court of Baldwin County, Alabama.

H. “Discharged Parties” shall mean Powercard International, Inc., d/b/a KM.Net, its predecessors and successors, parents, affiliates, subsidiaries, divisions, licensees, reinsurers, instrumentalities, agents, assignors, assignees, transferors, transferees, stockholders, and their present and former directors, officers, employees, agents, servants, loaned agents, loaned servants, servicers and servicing agents, attorneys and any other person, firm, corporation or other entity of any type or description for whose acts or omissions the “Discharged Parties” may be held liable.

I. “Discharged Non-Parties” shall mean The Columbia Bank, a state chartered bank organized under the laws of the State of Maryland with its principal office in Columbia, Maryland, Network One Financial Corporation, a Virginia corporation with its principal office located in McLean, Virginia, EFTNET Corporation, a Virginia corporation with its principal office located in McLean, Virginia, Merchant Commerce, Inc., a California corporation with its principal office located in Los Angeles, California, and all financial institutions in the United States at which bank accounts were electronically debited on or

after March 22, 2000, in connection with KM.Net Internet activity, including without limitation West Side Auto Employees Federal Credit Union, a federally chartered credit union with its principal place of business located in Flint, Michigan, Central Bank & Trust Company, a state chartered bank with its principal place of business located in Lexington, Kentucky, Citizens Bank, a state chartered bank with its principal place of business located in Flint, Michigan, Charter One Bank, FSB, a federal savings association with its principal place of business located in Cleveland, Ohio, and shall also include all of the Discharged Non-Parties' respective predecessors and successors, parents, affiliates, subsidiaries, divisions, licensees, reinsurers, instrumentalities, agents, assignors, assignees, transferors, transferees, stockholders, present and former directors, officers, employees, agents, servants, loaned agents, loaned servants, servicers, servicing agents, attorneys, and/or any other person, firm, corporation or other entity of any type or description for whose acts or omissions the "Discharged Non-Parties" may be held liable.

J. "Effective Date" shall mean the later of (1) if an appeal is not taken, and review is not sought by any person from the Final Judgment, the 43rd day after entry of the Final Judgment for the claims of the Subclass against PCI as the same may be certified as "Final" under Rule 54(b), Ala. R. Civ. P.; or (2), the first business day after a disposition on appeal affirming approval of the class settlement which is not subject to further appeal.

K. "Fairness Hearing" shall mean the hearing to be held by the Court for the purposes set forth below.

L. "Final Judgment" or "Final Order" shall mean the Final Order and Judgment approving this settlement, and dismissing with prejudice the claims of the Subclass against PCI as the same may be certified as "Final" under Rule 54(b), Ala. R. Civ. P., to be entered by the Court pursuant to this Agreement and incorporation the terms off this Agreement.

M. "Master List" shall mean the list of Subclass Members who submit a Claim Form within the time allowed for such submissions under this Agreement. The Master List shall include names and addresses of each Subclass Member to be included in the Master List, and shall also note the date on which the Subclass Member's Claim Form was received, as established by the United States Postal Service mark on the envelope containing the Claim Form.

N. "Notice" shall mean the Notice of Proposed Settlement of Class Action and Fairness Hearing that is to be directed to Subclass Members by electronic mail, U. S. Postal Service, and published as further described herein.

O. "Settling Plaintiffs' Claims" shall mean and include any and all claims, demands, actions and causes of action of any kind or nature whatsoever, known or unknown, direct or consequential, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law (federal and/or state), or otherwise, including, but not limited to, fraud, outrage, suppression, omission, misrepresentations, deceit or breach of contract (hereinafter "Claims"), which existed on the Effective Date of this Agreement, and which were alleged, or which could have been alleged by Plaintiffs Foote and Lally and Subclass Members each seeks to represent against the Discharged Parties and/or Discharged Non-Parties, arising out of, or relating in any way to, or concerning, KM.Net Internet activity as defined in this Agreement.

P. “Preliminary Approval Order” shall mean the order to be entered by the Court, as provided hereinafter in this Agreement, and to be given continued effect unless otherwise modified pursuant to the Final Hearing.

Q. “Settlement Agreement” or “Agreement” shall refer to this Agreement between the Settling Plaintiffs, including Subclass representatives Foote and Lally, Subclass Members, and the PCI.

#### **TERMS OF AGREEMENT**

##### **1. FINAL CERTIFICATION OF SUBCLASS A.**

Final certification is conditioned upon the Court’s approval of the settlement. In the event the Court does not approve all the substantive terms of this settlement, then PCI shall have the right to object to Final Certification, and PCI shall not have waived any defense that it has to any aspect of Final Certification.

##### **2. PRESENTATION OF SETTLEMENT TO THE COURT.**

Promptly after execution of this Agreement, the Parties shall submit this Agreement to the Court, together with a proposed Preliminary Approval Order granting preliminary approval of the Settlement and approval of Subclasses A1 and A2 as the settlement Subclasses. The Preliminary Approval Order must:

A. Certify that the Action may be, for settlement purposes only, maintained as a class action on behalf of Subclasses divisions A-1 and A-2 defined above.

B. Find that Plaintiffs Foote and Lally, as Subclass representatives, and Class Counsels, fairly and adequately represent and protect the interests of the absent Subclass members.

C. Find on a preliminary basis that the settlement set forth in this Settlement Agreement is fair, adequate and reasonable to the Subclass Members;

D. Provide for a Fairness Hearing, to be held no sooner than sixty (60) days after the original Postcard notice is mailed; to determine the fairness, adequacy and reasonableness of this Agreement;

E. Stay all proceedings in the Action in any way relating to the claims to be settled herein and enjoin the prosecution by class members of any other filed, non-filed and/or pending individual and/or Subclass claims relating to the claims to be settled herein;

F. Approve, as being in compliance with the due process rights and other rights of Subclass Members, the plan of notice set forth in Paragraph 3, herein, and the contents of the Postcard, Email, and Publication Notice to be submitted to the Court contemporaneously with the proposed Preliminary Approval Order described herein.

G. Provide a clearly defined right of opt out in the notice set forth in Paragraph 3 (C)(1) herein.

H. Provide that, in the event this proposed settlement as set forth in this Agreement is not approved by the Court, or in the event that this Agreement becomes null and void pursuant to its terms, this Agreement and all orders entered in connection therewith, including, but not limited to, all orders certifying Subclasses A or its divisions A-1 and/or A-2 as defined

herein, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in this action or in any other case or controversy; and that, in such event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Agreement.

In the event that the Court does not enter either the Preliminary Approval Order or the Final Order as described herein, or decides to do so only with modifications, then this entire Agreement shall become null and void, unless the Parties hereto agree in writing to proceed with this Agreement as modified.

### **3. NOTICE TO SETTLEMENT CLASS.**

A. Class counsels or their designated representative will provide Postcard and Email notice to the last known postal and electronic mail address of each Subclass member, if known, as well as Notice by Publication to the Subclass of the proposed settlement within thirty (30) days after entry of the Preliminary Approval Order. Additionally, class counsels or their designated representative will provide First Class Mail Notice and a Claim Form to all Subclass Members who submit a written request for same as soon as practicable following receipt of such request. The Forms of Notice shall be jointly submitted by the Parties to the Court for approval contemporaneously with the presentation of the proposed Preliminary Approval Order. The Email, First Class Mail and Publication Notice shall be in the form attached hereto as Exhibit "A", and shall:

- (1) describe the relevant claims in this Action;
- (2) define the Subclass and its divisions A-1 and A-2 certified by this Court for settlement purposes;
- (3) explain the benefits inuring to Subclass Members under this Agreement;
- (4) contain a Claim Form, to be returned under the procedure set forth hereinafter;
- (5) inform Subclass Members that, if they submit a Claim Form, a reputable independent firm operating under the direction of the Court and acting as the Settlement Administrator will determine the amount of benefits due that Subclass Member;
- (6) provide a right of exclusion or opt out as provided in Paragraph 3(C).
- (7) inform Subclass Members of the date, time and location of the Fairness Hearing and of their right to object to the settlement;
- (8) inform Subclass Members that, in the event any Subclass Member wishes to object to this settlement, a written objection to the settlement must be postmarked within forty-five (45) days of the date the original Postcard Notice is mailed;
- (9) inform Subclass members that they are discharging parties and nonparties and indemnifying and holding harmless PCI and others against claims of certain third parties.

B. The Postcard notice referred to above shall provide a short form summary of the settlement terms, the

Subclass members affected thereby, the right to opt out and object, and internet and postal addresses at which Subclass members may obtain the Settlement Agreement, Notice, and Claim Form. The Postcard Notice shall be in substantially the form annexed hereto as Exhibit “B.”

The cost of sending Notice to Subclass Members, as described above, will be the responsibility of class counsels. Class counsels shall have the right to apply to the Court for reimbursement of reasonable administrative expenses. Class counsels shall file written verification with the Court that notice as described herein has been sent to Subclass Members.

In addition to the forms of Notice as described in Paragraph A above, and for Subclass Members whose current postal or electronic mail address is unknown to PCI, and/or for whom the Notice is returned without a forwarding address, class counsels or their designated representative shall cause the Notice, Settlement Agreement, and Verified Claim Form to be published on the Internet for a period of forty-five (45) days beginning from the date that Postcard and Email notice are sent.

C. (1) Opt-Out. The Notice referred to above, except for Postcard Notice, shall (and Postcard Notice may) inform Subclass Members of their right to opt out or exclude themselves from the Settlement. Any settlement Subclass Member who desires to be excluded must do so by submitting a letter or postcard postmarked within forty-five (45) days of the date when the original Postcard notice is mailed. The letter or postcard should include the name and number of this action, *Foote et al. v. Power Card International, Inc.*, Case No. CV-2000-1074, and should also provide the class member’s name, address and telephone number. Should a Subclass Member elect to opt out or be excluded, such Subclass Member shall not be entitled to object to the Settlement nor to appear at the Fairness Hearing, nor shall such Subclass Member receive any of the benefits of this Settlement, but such Subclass Member will not be bound by the discharge, release or limited indemnification of any claim herein. All forms of Notice referred to above, other than Postcard Notice, will contain the name and address of the entity to which the opt-out letter or postcard will be sent. If a subclass member wishes to opt out written notice shall be sent to the following:

KM.Net Litigation  
Attention: Robert Clute, Jr., Esq.  
Johnstone, Adams, Bailey, Gordon  
& Harris LLC  
P.O. Box 1988  
Mobile, AL 36633  
Class Counsel

(2) Mr. Clute, as the designated recipient of the “opt-out” notices, will timely provide counsel for PCI and the Michigan Attorney General with the names, addresses and other relevant information from those class members who have given notice they will “opt-out” of the proposed class action settlement. At the Fairness Hearing, Mr. Clute will present to the Court (with copies to all counsel) a complete list of these class members who have elected to “opt-out” of the proposed class action settlement.

(3) Should more than 200 Subclass Members timely opt out, PCI shall have the right to void this Settlement in its

entirety at its option.

**4. SUBMISSION OF CLAIM FORMS: COMPILATION OF MASTER LIST.**

A. Any Subclass

Member who receives a Notice and who desires to receive Benefits must return a Verified Claim Form, as well as any requested documentation if it is available (the “Claim Documents”), with a postmark date no later than that date designated in the Claim Form itself. Any Subclass Member who does not receive a Notice may electronically obtain a Notice and Verified Claim Form on the “What’s New” portion of the Michigan Attorney General’s website [www.ag.state.mi.us](http://www.ag.state.mi.us) or may send a written request to:

David Daniell, Esq.  
Daniell, Upton & Perry, P. C.  
P. O. Box 1247  
Mobile, AL 36633  
Class Counsel

Robert Clute, Jr., Esq.  
Johnstone, Adams, Bailey, Gordon  
& Harris LLC  
P.O. Box 1988  
Mobile, AL 36633  
Class Counsel

Daniel G. Blackburn, Esq.  
P. O. Box 458  
Bay Minette, AL 36507  
Counsel for PCI

B. Prior to the Fairness Hearing, Class Counsels, the Michigan Attorney General, and Counsel for PCI shall provide to the Court a recommendation for an established and reputable independent firm capable of performing the duties of Settlement Administrator together with that firm’s estimated fees and expenses for performing such duties. The Court shall consider, approve and appoint a firm as Settlement Administrator to perform the duties described herein.

C. All Claim Documents shall be maintained by the Settlement Administrator, along with the envelope in which such mailing arrived. This data shall constitute verification of the date the claim documents were mailed by the Subclass Member. All Subclass Members who timely file a Verified Claim Form and, if requested by the Settlement Administrator, proper Claim Documents, will be eligible to receive the Benefits applicable to each Subclass Member. If the filed Verified Claim Form does not include all of the requested information and attachments, the Settlement Administrator shall conduct a reasonable review of the records provided by PCI, and attempt to find the requested information. If the Verified Claim Form does not contain sufficient information for the Settlement Administrator to conduct a reasonable investigation, or insufficient documentation exists to substantiate the Verified Claim Form, then the Settlement Administrator shall contact such Subclass Member and PCI in an effort to ascertain that information. If that search is unsuccessful after said contact, the Subclass Member will be notified of the Settlement Administrator’s findings. The decision of the Settlement Administrator as to payment or non-payment of Benefits, as well as the amount thereof, shall be final subject only to appeal to and review by the Circuit Court Judge.



D. The Settlement Administrator shall review all Verified Claim Forms and requested Claim Documents in the order received and shall prepare and provide to Class Counsels, the Michigan Attorney General, and PCI the Master List. If a timely filed Claim Form meets the stated criteria, the Settlement Administrator shall include the Subclass Member who submitted such Claim Form on the Master List. If the Claim Form is not timely filed, or does not contain sufficient information with which the Settlement Administrator can conduct a reasonable investigation as to whether the person who submitted such Claim Form is a Subclass Member, (after contacting the Subclass Member), then that Claim Form shall be disregarded and shall not be included on the Master List. The Settlement Administrator shall submit a list of those Subclass Members who have filed untimely or incomplete information to Counsel for all parties simultaneously with the Master List. The Settlement Administrator may submit an issue of qualification of such person to the Court for resolution.

E. If and when funds have been made available to pay the claims of Subclass A Members, the Settlement Administrator shall submit a schedule of amounts to be paid to each eligible Subclass Member to the Circuit Court Clerk and to the Settling Parties, and a request for administrative fees to pay for mailing claims payments. Upon receipt of such fees, the Settlement Administrator shall forthwith distribute claims payments by First Class United States mail.

## **5. BENEFITS TO SETTLEMENT SUBCLASS.**

At present, an interpleader action is pending in the United States District Court for the District of Maryland captioned *The Columbia Bank v. Network 1 Financial Corporation*, et al, bearing Civil Action No. WMN-00-1002 (hereinafter referred to as the “Maryland Action”) in which the approximate sum of \$6,033,000.00 has been interpleaded (hereinafter referred to as the “Interpleaded Funds”) by The Columbia Bank, the plaintiff in the Maryland Action. The defendants named in the Maryland Action besides PCI are Network One Financial Corporation, EFTNET Corporation, Merchant Commerce, Inc., West Side Auto Employees Federal Credit Union, Central Bank & Trust Company, Citizens Bank, and Charter One Bank, FSB.

Based upon discovery conducted by Class Counsels, PCI is without the assets, cash or borrowing ability to fund this Settlement. However, Settling Plaintiffs and PCI assert a right to and interest in some of the Interpleaded Funds. As an integral and essential part of this Settlement Agreement, the Settling Parties pledge and agree to use their best efforts within reason to obtain, through settlement or otherwise, possession or control of Interpleaded Funds in order that the benefits described in this paragraph and all ancillary costs of this Settlement can be paid. The Settling Parties, Class Counsels, and Counsel for PCI, however, have no assurances that they will succeed in obtaining possession or control of Interpleaded Funds through settlement or otherwise. If the Settling Parties and Class Counsels are unsuccessful, they will be unable to provide any of the benefits to the Subclass Members and this Settlement Agreement will be null and void.

Provided that this Settlement shall be funded, Subclass Members who timely submit a Verified Claim Form shall be eligible for refund of the purchase price of the mall(s) such Subclass Member purchased from PCI during the period beginning

March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:00 a.m. CST *minus* any Commissions actually received by the Subclass Member from PCI for the sale of internet shopping malls. This benefit shall be subject to the following conditions, exceptions and/or exclusions.

- A Subclass Member will not receive a refund if the Subclass Member's bank account was electronically debited for KM.Net Internet Activity, but the Subclass Member's bank or the Columbia Bank ultimately restored or reccredited the debited funds to the Subclass Member's account.
- A Subclass Member will not receive a refund if the Subclass Member's bank account was electronically debited for KM.Net Internet activities, but the Subclass Member subsequently received a refund from PCI.
- A Subclass Member will not receive a refund if the Subclass Member has received Commissions at any time from PCI for the sale of internet shopping malls in an amount equal to, or in excess of the purchase price of internet malls purchased during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:00 a.m. CST.
- A Subclass Member who files a Verified Claim Form seeking the refund benefits referred to above expressly waives and surrenders any right to pursue a claim against PCI for commissions earned but not paid.

**6. PAYMENT OF EXPENSES; DISPOSITION OF REMAINING FUNDS.**

All expenditures necessary for administration of this Settlement including but not limited to attorneys' fees and expenses shall be paid from the funds balance, if and only if such funds are made available to Settling Parties. Any funds remaining after disbursement of attorney's fees, payments to Class Representatives Lally and Foote and Subclass Members, costs of notice and administrative expenses shall be distributed to PCI pursuant to and in accordance with further orders of this Court.

**7. CONSIDERATION FOR THE BENEFITS HEREUNDER.**

In consideration of the Benefits to Plaintiffs Foote and Lally and to the Subclass provided for hereunder:

A. All of the Claims of Plaintiffs Foote and Lally and the claims of the Members of Subclass A as represented by each against PCI shall be dismissed on the merits with prejudice. By virtue of this Agreement, Plaintiffs Foote and Lally and Subclass Members release and discharge the Discharged Parties and Discharged Non-Parties for any and all causes of action, claims, damages, equitable, legal and administrative relief, interest, demands or rights, whether based on federal, state or local statute or ordinance, regulation, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiffs Foote and Lally or any Subclass Member against the Discharged Parties or Non-Parties in this Action or in any other Court action arising from or relating to electronic debiting of such class members' bank accounts on or after March 22, 2000 in the amount of the purchase price of Internet shopping mall(s) bought from PCI on the Internet during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:00 a.m. CST, and these Plaintiffs and Subclass Members will receive no further recovery based on any such claim.

B. A Subclass Member may elect to file a claim seeking to recover reimbursement for one or more Internet

shopping mall purchases made for the benefit of a third party or entity. Any Subclass Member who files a claim seeking reimbursement for such mall purchases on behalf of a third party or entity agrees to indemnify and hold harmless the Settlement Administrator and PCI, their respective directors, officers, employees and agents, past and present, from any and all claims asserted by a third party for reimbursement of money received by a Subclass Member which represents a refund on that third party's behalf including damages, costs, attorneys fees or other expenses. However, this indemnity obligation shall be limited to the total amount debited from the Subclass Member's account during the class period. The indemnified party shall not be entitled to this limited indemnification if a Subclass Member can show that the third party asserting the claim(s) has been reimbursed in the amount of payment to the Subclass Member.

C. Each Subclass Member, in order to receive Benefits, must timely file the Verified Claim Form as set forth herein.

D. The failure of any Subclass Member to receive Benefits hereunder shall not affect the release of the claims of the Settling Plaintiffs or the Subclass Members as stated herein, and the settlement shall retain its full, binding effect. As to any Subclass Member who otherwise would be entitled to receive Benefits but was not located, or who for any other reason did not receive notice of this Agreement, other than by publication, or failed to make a valid and timely claim to Benefits, all rights of such Subclass Member to payment in this Action shall lapse and be forfeited.

#### **8. ATTORNEYS' FEES AND COSTS.**

A. The parties understand and agree that Class Counsel shall make application to the Court for approval of an award of reasonable attorneys' fees, costs and expenses.

B. Class Counsels shall apply to the Court for, and Settling Parties shall not oppose, attorneys' fees, costs and expenses in a sum not to exceed Three Hundred Fifty Thousand (\$350,000.00) Dollars, exclusive of costs of the Settlement Administrator and notice. This amount shall include claims of Class Counsel for all Subclass Members.

C. In addition, Class Counsels shall apply for an award of \$2,500.00 to Plaintiffs Foote and Lally for their devotion of time and effort toward obtaining this settlement.

D. The Settling Parties agree that under no circumstances whatsoever shall PCI be responsible to pay any additional costs, expenses or attorneys' fees in settlement of this Action or to do any other thing except as expressly provided herein. All fees and costs incurred by Class Counsels from the inception of this matter through and including the final administration of the settlement and dismissal with prejudice of the case, including any fees or costs associated with any hearings, or witnesses employed by Class Counsels, or any tasks assigned to Class Counsels hereunder or in the Notice shall be borne by Class Counsels and shall not be paid by PCI, except pursuant to the terms of payment referred to in paragraph 8(B). In the event that this Agreement does not become final in the precise manner set forth herein or in the event that the Court declines to approve a settlement in accordance with this Agreement, all obligations of PCI as stated herein shall immediately become null,

void and of no further legal effect. The attorneys' fees, costs, and expenses awarded by the Court will be paid from available funds as soon after the Effective Date as the funds are in the Court.

E. The amount of any fees and costs to be awarded to Class Counsels, subject to the maximum set out herein, shall be in the sole discretion of the Court. An award of less than maximum set out herein shall not be grounds for voiding this Agreement and Class Counsels agree to accept whatever decision is made by the Court on this application.

F. In the event the Settlement Funds are insufficient to pay in full the amount the Settlement Administrator determines to be due Subclass Members and also ancillary settlement costs including without limitation attorneys fees, the Settlement Administrator shall determine the pro rata amount to be paid each Subclass Member who shall be entitled to reimbursement.

#### **9. FINAL APPROVAL BY THE COURT**

A Fairness Hearing will be held by the Court at such time or times as the Court may direct to determine whether the proposed settlement on the terms and conditions provided for in this Agreement is fair, reasonable and adequate, and whether the Preliminary Approval Order entered to this Agreement should be made final. Any Subclass Member who wishes to be heard in opposition to the settlement described in this Agreement must file a written objection as provided below. If, after the Final Hearing, this Agreement is fully approved by the Court, a Final Judgment consistent with the terms of this Agreement shall be entered by the Court.

#### **10. FAILURE TO OBTAIN COURT APPROVAL.**

If the Final Judgment is not entered, or if this Settlement is not finally approved and consummated on all terms by the Court as provided herein, or if an Order is entered denying final approval of this Agreement and Settlement, or if the Final Judgment is reversed or modified on appeal, or if appealed, the Final Judgment is not affirmed in all respects (with any one of such rulings being a potential "Void Order"), this Agreement shall be null and void.

#### **11. BEST EFFORTS.**

The Settling Parties and Counsel shall use their best efforts to cause the Court to give preliminary approval to this Agreement as promptly as possible, and to take all steps contemplated by the Agreement to effectuate the Settlement on the stated terms and conditions and further to obtain final approval of the settlement contained in this Agreement. Specifically, the Settling Plaintiffs and Class Counsels agree to recommend the settlement contained in the Agreement as being in the best interests of the Subclass Members under the circumstances. No Subclass Member, however, other than the Settling Plaintiffs, shall be precluded from questioning or objecting to the proposed settlement at the hearing for final approval thereof by the Court, notwithstanding Class Counsels' recommendation, provided that such Subclass Member follows the procedures for objections set forth below. The Settling Parties and their Counsel agree not to solicit, request or advise Subclass members to object to the settlement. The Parties shall not institute, participate in or encourage any appeal from an Order implementing this Agreement.

**12. WARRANTIES.**

Settling Plaintiffs and each and every Subclass Member warrant and represent that they have not conveyed, pledged, transferred, hypothecated or in any manner encumbered or assigned to any other natural person, firm, corporation, partnership, joint venture, trust or estate, business, association or any form of entity any of the Claims. Counsel for the Settling Parties warrant that this Agreement has been entered into in good faith following extensive negotiations, and no conflicts exist on their part.

**13. BINDING EFFECT OF AGREEMENT.**

This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement, their Counsel and their respective heirs, predecessors, successors and assigns and upon any corporation or other entities with or with which they may merge or consolidate.

**14. CONTINUING JURISDICTION.**

It is agreed that the Parties shall petition the Court to retain jurisdiction over the interpretation, effectuation, implementation and enforcement of this Agreement.

**15. PROCEDURES FOR PRESENTING OBJECTIONS**

Subclass Members who do not exercise their right to opt out pursuant to Section 3(C), above, shall have the right to appear and show cause, if they have any, why the proposed class should not be certified as a Rule 23(b) class under the Alabama Rules of Civil Procedure or why the proposed Settlement should not be approved by the Court. The right of the Subclass Member to object shall be deemed waived, however, and the Subclass Member will not be heard if that Subclass Member (a) has timely opted out or (b) neglects to file with the Court a written statement of any objections and reasons for same that Subclass Member may have, with copies to Counsel for the Settling Parties. If the Subclass Member wishes to appear in person at the hearing, a written notice shall be sent to Jackie Calhoun, Clerk, Circuit Court of Baldwin County, Post Office Box 1149, Bay Minette, Alabama 36507, with copies to the following:

Robert Clute, Jr., Esq.  
Johnstone, Adams, Bailey, Gordon  
& Harris LLC  
P.O. Box 1988  
Mobile, AL 36633  
Class Counsel

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P. O. Box 458  
Bay Minette, AL 36507  
Counsel for PCI

And

Katharyn Barron  
First Assistant Attorney General  
Consumer Protection Division  
Post Office Box 30213  
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All such written statements of objections or intent to appear must be postmarked within forty-five (45) days of the mailing of the original Postcard Notice. Objections filed and served in accordance with the foregoing procedure may be considered by the Court whether or not the objecting Subclass Member appears personally or by counsel at the hearing to argue the same.

**16. RESERVATION OF CLAIMS.**

The parties agree that except as to claims for class period refunds which are made or purported to be made in a representative capacity for Michigan residents who are members of Subclasses A-1 and A-2, which are hereby waived, nothing contained in this "Settlement Agreement" waives, releases, or relinquishes (expressly or by implication) the claims of the Michigan Attorney General against PCI contained in the "Complaint in Intervention" filed by the Michigan Attorney General against PCI (as it now stands and as it may later be amended). Such claims of the Michigan Attorney General against PCI will remain to be litigated after the resolution of the class action claims addressed in the instant "Settlement Agreement." Further, except as to claims for class period refunds which are made or purported to be made in a representative capacity for Michigan residents who are members of Subclasses A-1 and A-2, which are hereby waived, nothing contained in this "Settlement Agreement" waives, releases or relinquishes any of the matters involved in the ongoing action in the Circuit Court for the 30<sup>th</sup> Judicial Circuit (Ingham County, Michigan), bearing the style, "Jennifer M. Granholm, Attorney General of the State of Michigan v. PowerCard International, Inc., d/b/a KM.NET and ECB4U.COM and Stewart Giardiana," Civil Action No. 01-93897-CP.

**17. ALABAMA LAW GOVERNS.**

This Agreement shall be governed by, and construed in accordance with, the laws of Alabama, without regard to any conflict of laws provisions.

**18. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same document.

**19. HEADINGS.**

The headings used in this Agreement are for the purpose of convenience and do not constitute part of the Agreement, and no heading shall be used to help construe the meaning of the Agreement.

**20. ENTIRE AGREEMENT.**

This Agreement constitutes the entire understanding and agreement among the Settling Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, inducements or conditions, express or implied, oral or written, except as expressly herein contained. This Agreement may not be modified or amended other than by an agreement in writing executed by an authorized representative of each party at a contemporaneous or subsequent date.

<u>10/1/2001</u>	<u>/s/</u>
Date	DAVID F. DANIELL, ESQ.
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	(251) 694-0068 (Fax)

<u>10/1/2001</u>	<u>/s/</u>
Date	ROBERT CLUTE, JR., ESQ.
Counsel for Plaintiff	JOHNSTONE, ADAMS, BAILEY,
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	P.O. Box 1988
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	(251) 441-9257
	(251) 432-0712(Fax)

<u>10/1/2001</u>	<u>/s/</u>
Date	DANIEL BLACKBURN, ESQ.
Counsel for PCI, Powercard	P. O. Box 458
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	(251) 937-1750
	(251) 937-1785 (Fax)

<u>10/1/2001</u>	<u>/s/</u>
Date	H. WILLIAM WASDEN, ESQ.
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	State of Michigan
	OF COUNSEL:
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